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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,358	02/12/2004	Steven Tischer	030514 (BLL-0143)	5081

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EXAMINER	
ALLEN, WILLIAM J	

ART UNIT	PAPER NUMBER
3625	

MAIL DATE	DELIVERY MODE
10/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/777,358	TISCHER, STEVEN	
	Examiner	Art Unit	
	William J. Allen	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 August 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9,20-23 and 25-30* is/are pending in the application.

4a) Of the above claim(s) *30* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9,20-23 and 25-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Prosecution History Summary

Claims 1-9, 20-23, and 25-30 are pending and rejected as set forth below.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/13/2007 has been entered.

Response to Arguments

Applicant's arguments filed 8/13/2007 have been considered but are moot in view of the new ground(s) of rejection. Applicant's amendment necessitated the new grounds of rejection.

Election/Restrictions

Newly submitted claim 30 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 1-9, 20-23, and 25-29 and Claim 30 are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, claim 30 has separate utility such as comparing a second and third data message to determine a desired criterion, wherein the desired criterion is a lowest price among the offer to sell the desired product or service, and the additional offer to sell the desired product or service and further deleting at least one of the first and second messages from the mobile transceiver device in response to a predetermined expiration of at least one of the offer to sell the desired product or service and the additional offer to sell the desired product or service. See MPEP § 806.05(d).

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional

application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 30 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1, 4, 6-9, and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forslund et al. (US 6250557) in view of Moskowitz (US 20040015403) in view of English (US 20030055723) in further view of Kargman (US 20020049644).

Regarding claims 1 and 20, Forslund teaches a user mobile device such as a mobile phone complete with "a smart card wallet" facilitating secure shopping transactions made via the phone (see at least: abstract, col. 2 lines 51-64). Forslund further teaches a user establishing a shopping list prior to visiting a shopping mall, with the list being stored on the smart card wallet of the mobile phone. As the user enters the mall, the smart card wallet broadcasts the list of items to be purchased along with associated discount information (i.e. *transmitting a first data message using a mobile transceiver device, the first data message having information on a desired product or service*), with the "broadcasting" done in order to retrieve a list of stores and the items they offer in accordance with the transmitted list (i.e. there is a *determination whether at least one of the product or service providers has the desired product or service*). With no identification of specific store (i.e. *product or service providers*), the product list is transmitted *regardless of identities of the product or service providers and abilities of the product or service providers to provide the desired product or service*. By Forslund also teaches *transmitting a*

second signal including a second data message to the mobile transceiver device, the second data message containing an offer to sell the desired product or service by displaying the stores and their respective offerings to allow a user to select the best stores to make purchases from (see at least: col. 8 line 54-col. 9 line 6, claims 1 and 10).

Though Forslund teaches all of the above, Forslund does not teach where the first message is *iteratively transmitted to the product or service providers, receiving a plurality of additional offers to sell the desired product or service from a plurality of vendors, organizing the offer to sell the desired product or service and the plurality of additional offers to sell the desired product or service on a screen of the mobile transceiver device, and deleting a subset of the offer to sell the desired product or service and the plurality of additional offers to sell the desired product or service in response to the subset failing to meet a desired criterion.*

In the same field of endeavor, Moskowitz teaches a Bluetooth enabled portable device having browser to exchange data with a merchants within range of the device (see at least: abstract; 0004). More particularly, both the customer's wireless device and the merchant's wireless device periodically, and thereby *iteratively*, transmits a short-range identity signal (see at least: 0004, Fig. 3 (#302)). Thereby, Moskowitz teaches where a first data message is *iteratively transmitted to the product or service providers* within range of the device.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of Forslund to have included a first data message that is *iteratively transmitted to*

the product or service providers within range of the device taught by Moskowitz in order to ensure a transmission is completed. By periodically, and therefore iteratively, transmitting the signal, the device itself automatically repeats the signal to ensure that a receiver receives the message and the transaction is completed, thereby facilitating a quick and automated way of carrying out an offer, acceptance, and delivery of services and goods (see at least: Moskowitz, 0004, 0008).

In the field of electronic shopping and payment, English teaches a system for providing alternative vendors (i.e. additional offers) at a virtual point of sale of a user (see at least: abstract). More specifically, English teaches , *receiving a plurality of additional offers to sell the desired product or service from a plurality of vendors* (see at least: 0006, 0009-0010 (note "same or similar goods"), 0015) and further *organizing the offer to sell the desired product or service and the plurality of additional offers to sell the desired product or service on a screen of the mobile transceiver device* (see at least: 0043-0044, 0046-0047).

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Forslund to have included the noted features as taught by English because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

Also in the related field of electronic shopping, Kargman teaches where performing transaction from wireless devices (see at least: abstract, Fig. 1). More specifically, Kargman teaches *and*

deleting a subset of the offer to sell the desired product or service and the plurality of additional offers to sell the desired product or service in response to the subset failing to meet a desired criterion (see at least: 0061).

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Forslund to have included the noted features as taught by English because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

Regarding claim 4, Forslund in view Moskowitz in view of English in view of Kargman further teaches sending a menu of goods and services to the user resulting from the detection of a first data signal. Thereby, Moskowitz teaches sending an *offer to sell a product or service in the second data message including a product or service identifier and a price of the product or service* (see at least: Moskowitz, abstract (note "menu of goods/service"), 0005, 0033-0034, Fig. 3).

Regarding claim 6, Forslund in view Moskowitz in view of English in view of Kargman further teaches *wherein the mobile transceiver device comprises a cellular telephone* (see at least: Forslund, Fig. 1A-2B).

Regarding claim 7, Forslund in view of Moskowitz teaches *wherein the product or service providers directly receives the first signal having the first data message a the store location* (see at least: Moskowitz, Fig. 1, abstract, 0004).

Regarding claim 8, Forslund in view Moskowitz in view of English in view of Kargman further teaches transmission in *predetermined time intervals* (see at least: Moskowitz, 0004). Webster's Dictionary defines the term periodic as repeated cycles occurring at regular intervals; thereby, Moskowitz encompasses the term *predetermined time intervals*.

Regarding claim 9, Forslund in view Moskowitz in view of English in view of Kargman further teaches *receiving the second signal by the cellular telephone and displaying the second data message from the signal on the display screen* (see at least: Forslund, col. 8 line 66-col. 9 line 1).

Regarding claim 21, Forslund in view Moskowitz in view of English in view of Kargman further teaches *wherein iteratively transmitting the first signal includes iteratively transmitting the first signal through multiple communication protocol to transmit the first signal in each protocol* (see at least: Moskowitz, 0017-0018, 0023-0024).

2. Claims 2-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forslund in view Moskowitz in view of English in view of Kargman as applied to claims 1, 4, 6-9, and 20-21, and in further view of Walker et al. (US 5794207).

Regarding claims 2-3 and 5, Forslund in view Moskowitz in view of English in view of Kargman teaches all of above as noted and further teaches sending a first data message includes a product or service identifier (see at least: Forslund, col. 8 lines 54-62 (note the "list" must contain *identifiers*). Forslund in view Moskowitz in view of English in view of Kargman, however, does note expressly teach *a desired price* and an *expiration date wherein an offer to sell the desired product or service is not desired after the expiration date,* and *a second data message further including an offer expiration date wherein the offer to sell expires after the offer expiration date.*

Walker teaches where a first data message (CPO) transmitted from a wireless PDA includes a subject and description of the desired good or service, *a desired price* and an *expiration date wherein an offer to sell the desired product or service is not desired after the expiration date* (see at least: Fig. 5 (#540 and #550), Fig. 7, col. 16 line 12-col. 17 line 64). Walker also teaches wherein a seller may submit a counter offer following the same process that the buyer uses to generate the CPO (see at least: Fig. 18, col. 22 lines 52-58). The Examiner notes that this process encompasses the addition of an expiration date (now by the seller), thereby Walker teaches *a second data message further including an offer expiration date wherein the offer to sell expires after the offer expiration date.* It would have been obvious to one of ordinary skill in the art at

the time of invention to have modified the invention of Forslund in view of Moskowitz to have included *a second data message further including an offer expiration date wherein the offer to sell expires after the offer expiration date* as taught by Walker in order to provide a system that allows a seller satisfying the buyer criteria to bind the buyer to the offer and collect funds immediately (see at least: col. 7 lines 36-42).

3. Claims 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forslund in view Moskowitz in view of English in view of Kargman as applied to claims 1, 4, 6-9, and 20-21, and in further view of Silverman et al. (US 5136501).

Regarding claim 22, Forslund in view Moskowitz in view of English in view of Kargman teaches all of the above as noted and further teach where a second data message contains multiple offers to sell, the offers to sell being from stores matching the buyer criteria and displayed in order to allow the buyer to select the best stores to purchase from (see at least: Forslund, col. 8 line 54–col. 9 line 6).

Though Forslund in view Moskowitz in view of English in view of Kargman teaches receiving multiple second messages and determining the best stores, Forslund in view of Moskowitz does not expressly teach *predetermined number of data messages for sale with the lowest price.*

Silverman teaches a matching system for effectuating trades between two entities (see at least: abstract). Silverman further teaches receiving a plurality bids/offers (i.e. *second data message*) and routing those bids/offers to a user "keystation". The bids/offers available to the user, however, are merely a restricted subset of the total bids/offers. The "keystation book display" include displayable data (i.e. the bids/offers received) with the displayable data having a defined display depth range (see at least: col. 2 lines 17-35, col. 4 line 66-col. 5 line 7). Furthermore, the bids/offers are matched and displayed based on various criteria including price (see at least: col.

3 lines 39-43). Thereby, Silverman teaches where the second data message provided to the user contains *a predetermined number of data messages for sale with the lowest price.*

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Forslund in view Moskowitz in view of English in view of Kargman to have included *predetermined number of data messages for sale with the lowest price* as taught by Silverman in order to provide a system that reduces overhead required by a network and efficiently transmit required information to a user of the network (see at least: Silverman, col. 2 lines 30-33, col. 5 lines 33-35).

4. Claims 23, 25, and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forslund in view Moskowitz in view of English in view of Kargman as applied to claims 1, 4, 6-9, and 20-21, and in further view of Nanni et al. (US 6389269).

Regarding claims 23, 25, and 28-29, Forslund in view Moskowitz in view of English in view of Kargman further teaches all of the above as noted including iteratively transmitting a first signal and receiving a second signal in response. Forslund in view Moskowitz in view of English in view of Kargman, however, does not expressly teach *determining a first protocol* and *second protocol to iteratively transmit the first* and *second signal*, and further does not teach *cycling through multiple communication protocols to iteratively transmit a first* and *second signal.* In the field of mobile electronics, Nanni teaches a method and apparatus for transmitting signals in multi-frequency, multi –mode environments (see at least: abstract, col. 1 lines 6-8). More specifically, Nanni teaches the use of multi-band/multi-mode devices allowing users to operate the device within multiple system standards (see at least: col. 1 lines 14-18 and 29-36, col. 3 lines 42-63, col. 4 lines 22-28). The Examiner further notes that a notable a function of multi-band/multi-mode devices is to support varying types of transmission technologies or "protocols" and further switch frequency bands and transmission modes as needed (e.g. initially trying a digital mode first then attempting an analog mode). Thereby, Nanni effectively teaches *determining a first protocol* and *second protocol to iteratively transmit the first* and *second signal*, and further does not teach *cycling through multiple communication protocols to iteratively transmit a first* and *second signal.* It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Forslund in view Moskowitz

in view of English in view of Kargman to have included *determining a first protocol* and *second protocol to iteratively transmit the first* and *second signal*, and further does not teach *cycling through multiple communication protocols to iteratively transmit a first* and *second signal* as taught by Nanni in order to provide a user device which operate with more than one system standard so as to allow a user to move freely from one system to another while maintaining device operations (see at least: Nanni, col. 1 lines 14-18 and 29-36).

5. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forslund in view Moskowitz in view of English in view of Kargman as applied to claims 1, 4, 6-9, and 20-21, and in further view of Fano et al. (US 20050091118).

Regarding claim 26, Forslund in view Moskowitz in view of English in view of Kargman further teaches all of the above as noted including iteratively transmitting a first signal and receiving a second signal in response. Forslund in view Moskowitz in view of English in view of Kargman, however, does not expressly teach a *third data message including an additional offer to sell the desired product.* In the same field of endeavor, Fano teaches an agent-based system utilizing a portable device such as a PDA for GPS based wireless shopping (see at least: abstract). More specifically, Fano teaches displaying items of interest in stores nearest to the user, and further receiving an alert to local retailers offering the same product for sale (i.e. *a third data* message) upon user selection of an item of interest (see at least: Fig. 27, 0288). Thereby, Fano teaches a *third data message including an additional offer to sell the desired product.* It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Forslund in view of Moskowitz to have included a *third data message including an additional offer to sell the desired product* as taught by Fano in order to alert users to additional sales opportunities such as local retailers in order to find the best deal or best price available (see at least: Fano, 0288).

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forslund in view Moskowitz in view of English in view of Kargman as applied to claims 1, 4, 6-9, and 20-21, and in further view of Vermande (US 20020095340).

Regarding claim 27, Forslund in view Moskowitz in view of English in view of Kargman further teaches all of the above as noted including iteratively transmitting a first signal and receiving a second signal in response. Forslund in view Moskowitz in view of English in view of Kargman, however, does not expressly teach displaying the second, third, etc. data messages *in response to a generation of a signal indicative of a key selection from the keypad to view the data messages*. In the field of wireless advertising, Vermande teaches a wireless terminal using utilizing a WAP service module storing advertisements without displaying them in a memory so as to be able to display them at a later time while browsing the memory (see at least: abstract). More specifically, Vermande teaches *in response to a generation of a signal indicative of a key selection from the keypad to view the data messages* by allowing advertisements to be saved and browsed at a later time by a user (see at least: 0004, 0022, 0025). It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Forslund in view of Moskowitz to have included *in response to a generation of a signal indicative of a key selection from the keypad to view the data messages* as taught by Vermande in order to provide a system that prevents a user form being disturbed by presenting compulsory advertisements while still allowing a user to view the advertisements as they please at a later time (see at least: Vermande, 0005).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William J. Allen whose telephone number is (571) 272-1443. The examiner can normally be reached on 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff A. Smith can be reached on (571) 272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

William J. Allen
Patent Examiner
October 8, 2007

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